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1 [Caption omitted.]

2 In United States District Court, District of Maryland

No. 5816 At Law

ARTHUR W. MACHEN

vs.

THE UNITED STATES OF AMERICA

Docket entries

1935

Dec. 30. Petition of Arthur W. Machen filed. (Service admitted by by U. S. Attorney.),

" " Affidavit of mailing copy of petition to Attorney General of U. S. and of service on U. S. Atty. filed.

1936

Feb. 28. Answer of United States of America filed.

June 20. Case tried before Court (Coleman, J.) without a jury.

" " Stipulation of facts filed.

" " Supplemental Stipulation of Facts filed.

" " Plaintiff's (6) prayers filed.

" " Verdict for the Defendant.

" " Judgment on Verdict nisi.

" 23. Judgment on Verdict absolute in favor of the Defendant.

" " Testimony and Opinion of Court filed.

" " Court's Findings of Facts and Conclusions of Law filed.

July 6. Petition of Plaintiff for allowance of appeal to the U. S. Cir. Ct. of Appeals and Order of Court allowing Appeal as prayed and fixing the penalty of the appeal bond in the sum of $300 filed.

" " Assignment of Errors filed.

" " Bonds approved and filed.

" " Citation issued retble. within forty days.

3 " 21. Stipulation of counsel as to making up record on appeal filed.

" 23. Petition of Plaintiff and Order of Court extending the time for filing the record and docketing this cause in the Cir. Ct. of Appeals for thirty days after August 15th, 1936, filed.

" 31. Bill of Exceptions filed.

IN UNITED STATES DISTRICT COURT

[Title omitted.]

Petition of Arthur W. Machen for entry of judgment, etc.

Filed December 30, 1935

To the honorable, the Judges of the District Court of the United States for the District of Maryland:

The petition of Arthur W. Machen, of Baltimore County in the State of Maryland, respectfully shows:

1. That your Petitioner is a *citizen of the United* States and of the State *of Maryland*, and a resident of Baltimore County in said State.

2. That on or about the 23rd day of March 1933, your Petitioner, in reliance upon the good faith of the United States, which (as hereinafter more fully shown) turned *out to* be, so far as the executive and legislative departments of the said United States are concerned, bad faith, purchased and has ever since held and owned, and now holds and owns, a coupon bond of the United States, commonly known as a First Liberty 3½ Bond of the denomination of $1,000.00, No. 47084, bearing interest, free from all State and Federal taxes, except estate or inheritance taxes, at the rate of 3½% per annum, payable semiannually on the 15th days of June and December in each year until the 15th day of June 1947, unless said bond should be redeemed in the meantime, pursuant *to the terms thereof* and of the Act of Congress under which it was issued.

4 3. That said bond, together with other bonds of like tenor and effect, were issued under and pursuant to an Act of Congress entitled "An Act to authorize an issue of bonds to meet expenditures for the national security and defense, and for the purpose of assisting in the prosecution of the war, to extend credit to foreign governments, and for other purposes." (Act of April 24, 1917, c. 4, Sec. 1, 40 Stat. 35.)

4. That pursuant to the terms of said Act of Congress, the Secretary of the Treasury fixed the rate of interest and dates of maturity and redemption of said series of bonds issued thereunder and caused bonds to be issued to patriotic and confiding citizens of the United States to a very large amount, all of which were of like tenor and *effect as those of the bond* so owned by your Petitioner, which reads as follows:

LIBERTY LOAN OF 1917

The United States of America for value received promises to pay to Bearer the sum of One thousand dollars on the 15th day of June 1947 with interest at the rate of three and one half per centum per annum payable semiannually on December 15 and June 15 in each year until the principal hereof shall be payable. The principal and interest of this bond shall be payable in United States gold coin of the present standard of value and shall be exempt both as to principal and interest from all taxation except estate or inheritance taxes imposed by authority of the United States, or its possessions or by any State or local taxing authority. This bond shall not bear the circulation privilege. This bond is one of a series of $2,000,000,000. principal amount of bonds of an issue of $5,000,000,000. authorized by an Act of Congress entitled "An Act to authorize an issue to meet expenditures for the national security and defense and for the purpose of assisting in the prosecution of the war, to extend credit to foreign governments, and for other purposes", approved April 24, 1917. Bonds of different denominations, and coupon and registered bonds of said series are interchangeable, in equal principal amounts

under regulations of the Treasury Department, and upon payment, if the Secretary of the Treasury shall require, of a charge not
5 exceeding $1 for each bond issued. All or any of the bonds of this series of which this is one may be redeemed and paid, at the pleasure of the United States on or after June 15, 1932, on any semiannual interest payment date or dates at the par value thereof and interest accrued at the date of redemption on notice published at least three months prior to the redemption date and published thereafter from time to time during said three months period as the Secretary of the Treasury shall direct. If in any case less than all of the bonds of said series are to be redeemed the bonds to be redeemed shall be determined by lot by such method as may be prescribed by the Secretary of the Treasury. From the date of redemption designated in any such notice interest on the bonds called for redemption shall cease, and all coupons maturing after said date shall be void. If any subsequent series of bonds (but not including United States certificates of indebtedness and other short term obligations) shall be issued by the United States at a higher rate of interest than three and one half per centum per annum before the termination of the war between the United States and the Imperial German Government the date of such termination to be fixed by proclamation of the President of the United States the holder hereof shall have the privilege at any time within six months after the issue of bonds of such subsequent series the date of such issue to be fixed by prior public announcement by the Secretary of the Treasury of converting this bond at par upon presentation and surrender hereof with all unmatured coupons at the Treasury Department, Washington, or at such other agencies as the Secretary of the Treasury may hereafter designate for the purpose and upon adjustment of accrued interest to the date of conversion into an equal amount of bonds bearing such higher rate of interest and substantially identical with the bonds of such subsequent series except that the bonds issued upon such conversion shall be identical with the bonds of the present series as to maturity of principal and of interest and terms of redemption.

W. G. McAdoo,
Secretary of the Treasury.

Washington, D. C., *June 15, 1917.*

6 5. That said bond, like other bonds of the said series, provided, in accordance with the requirement of the Act of Congress under which they were issued, that "The principal and interest of this bond shall be payable in gold coin of the United States of the present standard of value."

6. That until the inauguration of the present President of the United States, his Excellency Franklin Delano Roosevelt, the United States, both in times of war and peace, of prosperity and depression, duly paid the interest on said bonds in currency freely exchangeable for gold coin of the United States of said standard of value or on the demand of any holder in gold.

7. That on the 5th day of June 1933 the President approved a *Joint Resolution* of Congress (48 Stat. 112) popularly (and aptly) known as the Repudiation Act whereby, craftily and subtly contriving and intending to repudiate the obligations of the United States and to deprive your Petitioner and other holders of bonds of the United States of property without due process of law in violation of the Fifth Amendment and to repudiate the provision of the Fourteenth Amendment that "the validity of the public debt of the United States authorized by law shall not be questioned", it was provided *inter alia* that—

"Every provision contained in or made with respect to any obligation which purports to give the obligee a right to require payment in gold or a particular kind of coin or currency, or in an amount in money of the United States measured thereby, is declared to be against public policy; * * * Every obligation heretofore or hereafter incurred, whether or not any such provision is contained therein or made with respect thereto, shall be discharged upon payment, dollar for dollar, in any coin or currency which at the time of payment is legal tender for public and private debts. Any such provision contained in any law authorizing obligations to be issued by or under authority of the United States is hereby repealed, but the repeal of any such provision shall not invalidate any other provision or authority contained in such law."

8. Subsequently the Congress of the United States, with the
7 approval of the President, passed sundry Acts intended and designed more fully to effectuate the repudiation of obligations of the United States. Gold was wholly withdrawn from circulation and the coinage thereof prohibited. The theoretic gold content of the dollar was reduced from 25.8 grains to 15 5/21sts grains, but for all practical purposes it was reduced to zero, as the executive and legislative departments of the Government, pursuant to the same policy of repudiation, confiscation, and tyranny, will not issue to the holders of bonds such as your Petitioner's any gold whatsoever. Thereafter the currency of the United States became and was an irredeemable paper currency without any actual or intrinsic value whatsoever, commonly known as "boloney dollars."

9. On the 18th day of February 1935 the Supreme Court of the United States held the abovementioned resolution of June 5, 1933, in so far as it undertook to nullify gold clauses and obligations of the United States similar to that held by your Petitioner, and in so far as it provided that such obligations shall be discharged for payment, dollar for dollar, in any coin or currency which at the time of payment is legal tender for public and private debts, to be unconstitutional. Nevertheless, the executive and legislative departments of the United States, so far from observing or attempting to observe the solemn declaration and decision of the Supreme Court, embarked upon a policy of attempting, in violation of their respective oaths of office, to nullify and evade the constitutional obligations of the Republic.

10. Pursuant to this policy, on the 22nd day of April 1935, Henry Morgenthau, Jr., Secretary of the Treasury, issued a call for redemption before maturity of all bonds of the series held by your Petitioner in the words and figures following:

8 REDEMPTION OF FIRST LIBERTY LOAN BONDS

TREASURY DEPARTMENT,
OFFICE OF THE SECRETARY,
Washington, April 22, 1935.

1935
Department Circular No. 535.
Public Debt Service.

To Holders of First Liberty Loan Bonds of 1932–47 and Others Concerned:

1. NOTICE OF CALL FOR REDEMPTION BEFORE MATURITY.

On March 14, 1935, the following public notice of call for redemption was given:

To Holders of First Liberty Loan Bonds of 1932–47 and Others Concerned:

Public Notice is hereby given:

1. All outstanding First Liberty Loan bonds of 1932–47 are hereby called for redemption on June 15, 1935. The various issues of First Liberty Loan bonds (all of which are included in this call) are as follows:

First Liberty Loan 3½% per cent bonds of 1932–47 (First 3½'s), dated June 15, 1917;

First Liberty Loan Converted 4 percent bonds of 1932–47 (First 4's), dated November 15, 1917;

First Liberty Loan Converted 4¼ per cent bonds of 1932–47 (First 4¼'s), dated May 9, 1918; and

First Liberty Loan Second Converted 4¼ percent bonds of 1932–47 (First-Second 4¼'s), dated October 24, 1918.

2. Interest on all such outstanding First Liberty Loan bonds will cease on said redemption date, June 15, 1935.

3. Full information regarding the presentation and surrender of First Liberty Loan bonds for redemption under this call will be given in a Treasury Department circular to be issued later.

4. Holders of First Liberty Loan bonds now called for redemption on June 15, 1935, may, in advance of that date, be offered the privilege of exchanging all or any part of their called bonds for
9 other interest-bearing obligations of the United States, in which even public notice will hereafter be given.

HENRY MORGENTHAU, JR.,
Secretary of the Treasury.

TREASURY DEPARTMENT,
Washington, March 14, 1935.

Said call was not intended to be, and was not in fact, a call for payment in the medium required by the Constitution and by the

contract between your Petitioner and the United States. On the contrary, the call contemplated payment not in gold dollars or in any real dollars whatsoever, but in boloney dollars as aforesaid, and your Petitioner is advised and therefore charges that said attempted call was and is unconstitutional, null and void, and a deliberate attempt to evade and nullify the Constitution of the United States.

11. Your Petitioner refused to surrender his said bond pursuant to said illegal and unconstitutional attempted call. On the 15th day of December 1935, a coupon on said bond, according to its terms, fell due, which said coupon is in the words and figures following:

"37. The United States of America will pay to bearer ($17.50) seventeen dollars and fifty cents for six months interest due on the fifteenth day of Dec. on $1,000 3½ per cent bond of Liberty Loan of 1917. Houston B. Teehee, Register of the Treasury. 1209332."

12. The United States has refused to pay said coupon even in boloney dollars, claiming that the aforesaid attempted call is valid. Your Petitioner accepts, though under protest, the decision of the Supreme Court of the United States that, in the absence of proof that the boloney dollars are less in purchasing power than real dollars or gold dollars as required by the contract, your Petitioner is entitled to no more than nominal damages for the breach of contract by the United States; but your Petitioner is advised that when the United States undertakes to call the bonds in advance of maturity the burden rests upon the Government to show that it has complied strictly with the terms of the contract and was ready and willing to pay the principal according to the terms of the bond; that it has not done so, but has called the bonds for payment in boloney dollars and not in gold coin of the United States of the standard of value existing in 1917; that the Defendant, being in default at the time of said attempted call, was not in a position to call the bonds before maturity; and that said attemped call is therefore in law no call at all, and therefore the obligation to pay interest continues.

13. As further evidence of the unlawful conspiracy of the executive and legislative departments of the Defendant to oppress and injure your Petitioner and other holders of obligations of the United States, your Petitioner refers to Joint Resolution No. 63 of the 74th Congress approved August 27, 1935.

Wherefore Your Petitioner Prays that this Honorable Court may enter a judgment in his favor against the United States of America in the sum of $17.50, and that your Petitioner may have such other and further relief as to the Court may seem just and right.

ARTHUR W. MACHEN.

H. VERNON ENEY,
ALEXANDER GORDON, III,
Attorneys for Petitioner.

[*Duly sworn by Arthur W. Machen, jurat omitted in printing.*]

Memorandum: Affidavit of mailing copy of petition to Attorney General of U. S. and of service on U. S. Attorney filed in Court 30th December, 1935.

11 IN UNITED STATES DISTRICT COURT

[Title omitted.]

Answer of defendant

Filed February 28, 1936

To the Honorable, the Judges of said Court:

The United States of America, Defendant, by Bernard J. Flynn, United States Attorney, for answer to the Plaintiff's petition herein, says:

First. That the Defendant is without knowledge of the facts alleged in paragraph 1 and neither affirms nor denies the same but leaves the Petitioner to full proof thereof.

Second. That the Defendant denies each and all allegations in paragraph 2 except that reference is made to the alleged bond for the contents thereof; and except that Defendant is without knowledge or information with respect to and therefore denies the allegations concerning the ownership of a coupon bond and the facts upon which the Plaintiff relied in making the alleged purchase.

Third. That the Defendant is without knowledge or information with respect to and therefore denies the allegations contained in paragraph 3 except that Defendant admits that First Liberty Loan 3½% bonds were issued by the United States under the authority of an Act approved April 24, 1917; and except that reference is made to said bonds for the contents thereof.

Fourth. That as to the allegations contained in paragraph 4 of the petition herein the Defendant is without knowledge or information with respect to the ownership by the Plaintiff at any time of any one or more bonds issued pursuant to said Act of Congress and, therefore, denies the same, except that the Defendant denies that the tenor and effect of such bonds issued pursuant to said Act of Congress were as alleged and except that reference is made to such bonds for the contents thereof.

12 Fifth. That the Defendant is without knowledge or information with respect to and therefore denies the allegations in paragraph 5 except that it is admitted that First Liberty Loan 3½% Bonds contained the provision that "the principal and interest of this bond shall be payable in United States gold coin of the present standard of value."

Sixth. That the Defendant denies each and all the allegations contained in paragraph 6 except that it is admitted that the Defendant at all times has duly paid its interest obligation on First Liberty Loan 3½% bonds.

Seventh. That the Defendant denies each and all allegations of fact contained in said paragraph except that it is admitted that on June 5, 1933, the President approved a Joint Resolution of Congress (48 Stat. 112) to which reference is made for the contents thereof.

Eighth. That the Defendant denies each and all allegations of fact contained in paragraph 8 and as to the remaining allegations states that they are conclusions of law requiring no answer.

Ninth. That the Defendant denies each and all allegations of fact contained in paragraph 9 and as to the remaining allegations states that they are conclusions of law requiring no answer.

Tenth. That the Defendant denies each and all allegations of fact contained in paragraph 10 except that it is admitted that under date of April 22, 1935, the Secretary of the Treasury of the United States issued Treasury Department Circular No. 535, which contained in part the words and figures given in paragraph 10; and except that reference is made to said Treasury Department Circular for the contents thereof; and as to the remaining allegations the Defendant states that they are conclusions of law requiring no answer.

Eleventh. That the Defendant denies each and all allegations of fact contained in paragraph 11 except that the defendant is without knowledge or information sufficient to form a belief as to the Petitioner's refusal to surrender his bond and as to the terms of the alleged coupon; and as to the remaining allegations the Defendant states that they are conclusions of law requiring no answer.

13 Twelfth: That the Defendant denies each and all allegations of fact contained in paragraph 12 and as to the remaining allegations states that they are conclusions of law requiring no answer; and except that reference is made to Treasury Department Circular No. 535 for the contents thereof.

Thirteenth: That paragraph 13 contains no allegations of fact or law and therefore requires no answer.

In further answer to the said petition, this Defendant denies that the Petitioner is entitled to any recovery herein and for additional grounds of defense on the part of the Defendant, says:

1. That the Petitioner held no license and was not authorized to acquire, transport, melt or treat, import, export, or earmark or hold in custody for foreign or domestic account, gold in any form on January 30, 1934, or at any time subsequent to that date.

2. That the Petitioner has not surrendered or offered to surrender or presented for payment the First Liberty Loan 3½% Bond, No. 47084, of which he alleges to be the owner.

3. That the Petitioner has not surrendered or offered to surrender or presented for payment the coupon of which he alleges to be the owner in paragraph 11 of his petition.

And having fully answered the said petition this Defendant prays to be hence dismissed with its proper costs.

BERNARD J. FLYNN,
United States Attorney.
C. ROSS MCKENRICK,
Assistant United States Attorney.

14 In United States District Court

[Title omitted.]

Findings of facts and conclusions of law

Filed June 23, 1936

Findings of facts

I find the facts in this case to be as set forth in the Stipulation of Facts filed herein during the course of the trial and in the supplemental Stipulation filed herein at the conclusion of the hearing.

Conclusions of law

On the authority of Perry v. United States, 294 U. S. 330, and Morgan v. The United States, 113 U. S. 476, I find that the Plaintiff has no right to recover in the present suit, and that such right, if any, to recover, must be in accordance with the rule laid down in the Perry case.

I consider it unnecesessary at this time, in view of the statements which I have made in the course of the argument, and in view of the Supreme Court's decisions, to render any further opinion.

WILLIAM C. COLEMAN,
United States District Judge.

Thereupon, to wit, on the 20th day of June, 1936, the Court directed in open Court the entry of a verdict for the Defendant.

In United States District Court

Verdict

June 20, 1936—Verdict for the defendant

In United States District Court

Judgment

June 23, 1936—Judgment on verdict absolute in favor of the Defendant.

15 In United States District Court for the District of Maryland

Law No. 5816

ARTHUR W. MACHEN
vs.
UNITED STATES OF AMERICA

Bill of exceptions

Filed July 31, 1936

Be it remembered that on the trial of this cause in the June Term 1936 of this Court, the Honorable William C. Coleman presiding, the following proceedings were had, to wit:

The Plaintiff to sustain the issues on his part offered the following stipulation of facts:

Stipulation of facts

[Title omitted.]

It is hereby stipulated by and between the plaintiff, Arthur W. Machen, and the defendant, the United States of America, that the facts hereinbelow stated are true and may be deemed to have been proved by proper evidence. It is further stipulated that the papers hereinbelow described and attached hereto are true and correct copies of the originals, and that such copies may be used on trial of the above-entitled action to the same effect as if the originals thereof were produced and proved. Each party, however, reserves the right to object to the materiality or relevancy of any of said facts and of any of said papers or their contents, and reserves the right to introduce other and further evidence not inconsistent with the facts herein stipulated.

I

Exhibit "A" is a true copy of the text of a $1,000 First Liberty Loan 3½% Bond of the United States authorized by an Act of Congress approved April 24, 1917, and of the bond which the plaintiff alleges he owns.

16

II

Exhibit "B" is a true copy of the text of an interest coupon attached to a $1,000 First Liberty Loan 3½% Bond and of the coupon attached to the bond which the plaintiff alleges he owns.

III

Exhibit "C" is a true copy of Treasury Department Circular No. 78, dated May 14, 1917.

IV

Exhibit "D" is a true copy of the Notice of Call by the Secretary of the Treasury for redemption of First Liberty Loan Bonds of 1932–1947, published on March 14, 1935, and published thereafter from time to time during the period from March 14, 1935, to June 15, 1935, as directed by the Secretary of the Treasury and as provided in the bond.

V

Exhibit "E" is a true copy of Treasury Department Circular No. 535, dated April 22, 1935.

VI

The plaintiff held no license to acquire, transport, melt, or treat, import, export, or earmark, or hold in custody for foreign or domestic account, gold in any form on March 6, 1933, or at any time subsequent to that date.

VII

Upon proper presentation and surrender on and after June 15 1935, the United States redeemed all First Liberty Loan 3½% Bonds tendered and surrendered for redemption pursuant to the notice of call referred to in paragraph IV above by payment of legal tender currency in amounts equal to the face amounts of the bonds so tendered and surrendered for redemption, but the Treasury Department refused to pay gold coin therefor. The plaintiff has not surrendered or offered to surrender or presented for payment the First Liberty Loan 3½% Bond No. 47084, which he alleges he owns. The Treasurer of the United States and other officers and fiscal
17 agents of the United States have not at any time been directed by the Secretary of the Treasury to redeem any bonds of said series by payment in gold coin or in any manner other than as above stated, but have been authorized and directed to redeem in the manner above stated any and all such bonds duly presented and surrendered.

VIII

No interest coupon bearing the date of December 15, 1935, which had been attached to a First Liberty Loan 3½% Bond referred to in the notice of call mentioned in Paragraph IV above, has been paid by the Treasury Department. The plaintiff has not surrendered or offered to surrender or presented for payment the coupon formerly attached to the First Liberty Loan 3½% Bond No. 47084, which he alleges he owns. Neither the Treasurer nor any other officer or any fiscal agent of the United States has been instructed by the Secretary of the Treasury to pay any coupon bearing a date subsequent to June 15, 1935, which had been attached to a First Liberty Loan 3½% bond and payment of such coupons bearing a date subsequent to June 15, 1935, as were presented for payment was refused by the Treasury Department upon the ground that the bonds had been called for redemption on June 15, 1935.

IX

As used in this stipulation the phrase "legal tender currency" means all currencies and coins of the United States referred to in paragraph 2 of the Joint Resolution of Congress dated June 5, 1933, except gold.

H. VERNON ENEY,
ALEXANDER GORDON, III
Attorneys for Plaintiff.
BERNARD J. FLYNN,
U. S. Attorney.

18 *Exhibit "A" to stipulation*

First 3½'s—Coupon

THE UNITED STATES OF AMERICA

For value received promises to pay to the bearer the sum of one thousand dollars on the 15th day of June 1947, with interest at the rate of three and one-half per centum per annum payable semi-annually on December 15 and June 15 in each year until the principal hereof shall be payable, upon presentation and surrender of the interest coupons hereto attached as they severally mature. The principal and interest of this bond shall be payable in United States gold coin of the present standard of value, and shall be exempt, both as to principal and interest, from all taxation, except estate or inheritance taxes, imposed by authority of the United States, or its possessions, or by any State or local taxing authorities. This bond shall not bear the circulation privilege. This bond is one of a series of $2,000,000,000, principal amount of bonds, of an issue of $5,000,000,000 authorized by an Act of Congress, entitled "An Act To authorize an issue of bonds to meet expenditures for the national security and defense, and, for the purpose of assisting in the prosecution of the war, to extend credit to foreign governments, and for other purposes", approved April 24, 1917. Bonds of different denominations, and coupon and registered bonds, of said series, are interchangeable, in equal principal amounts, under regulations of the Treasury Department, and upon payment, if the Secretary of the Treasury shall require, of a charge not exceeding $1 for each new bond issued. All or any of the bonds of the series of which this is one may be redeemed and paid at the pleasure of the United States on or after June 15, 1932, on any semi-annual interest payment date or dates, at the face value thereof and interest accrued at the date of redemption, on notice published at least three months prior to the redemption date and published thereafter from time to time during said three months' period as the Secretary of the Treasury shall direct. If in any case less than all of the bonds of

19 said series are to be redeemed, the bonds to be redeemed will be determined by lot by such method as may be prescribed by the Secretary of the Treasury. From the date of redemption designated in any such notice, interest on the bonds called for redemption shall cease, and all coupons thereon maturing after said date shall be void. If any subsequent series of bonds (not including United States certificates of indebtedness and other short term obligations) shall be issued by the United States at a higher rate of interest than three and one-half percentum per annum before the termination of the war between the United States and the Imperial German Government, the date of such termination to be fixed by proclamation of the President of the United States, the holder hereof shall have the privilege, at any time within six months after

the issue of bonds of such subsequent series, the date of such issue to be fixed by prior public announcement by the Secretary of the Treasury, of converting this bond at par, upon presentation and surrender hereof with all unmatured coupons, at the Treasury Department, Washington, or at such other agencies as the Secretary of the Treasury may hereafter designate for the purpose, and upon adjustment of accrued interest to the date of conversion—into an equal par amount of bonds bearing such higher rate of interest, and substantially identical with the bonds of such subsequent series except that the bonds issued upon such conversion shall be identical with the bonds of the present series as to maturity of principal and of interest and terms of redemption.

W. M. McAdoo,
Secretary of the Treasury.

Washington, *D. C., June 15, 1917.*
Recorded: ------ Examined ------
Houston B. Teehee,
Register of the Treasury.

20 *Exhibit "B" to stipulation*

37. The United States of America Will Pay to Bearer ($17.50) Seventeen Dollars and fifty cents for six months' interest due on the fifteenth day of Dec. 1935, on $1000 3½ per cent Bond of Liberty Loan of 1917. Houston B. Teehee, Register of the Treasury. 00000.
Memo: Exhibit "C" omitted pursuant to Stipulation of Counsel.

Exhibit "D" to stipulation

First Liberty Loan Bonds

Notice of Call for Redemption Before Maturity

To Holders of First Liberty Loan Bonds of 1932–47 and Others Concerned:

Public notice is hereby given:

1. All outstanding First Liberty Loan bonds of 1932–47 are hereby called for redemption on June 15, 1935. The various issues of First Liberty Loan bonds (all of which are included in this call) are as follows:

First Liberty Loan 3½ *percent bonds* of 1932–47 (First 3½'s), dated June 15, 1917;

First Liberty Loan Converted 4 percent bonds of 1932–47 (First 4's), dated November 15, 1917;

First Liberty Loan Converted 4¼ percent bonds of 1932–47 (First 4¼'s), dated May 9, 1918; and

First Liberty Loan Second Converted 4¼ percent bonds of 1932–47 (First-Second 4¼'s), dated October 24, 1918.

2. Interest on all such outstanding First Liberty Loan bonds will cease on said redemption date, June 15, 1935.

21 3. Full information regarding the presentation and surrender of First Liberty Loan bonds for redemption under this call will be given in a Treasury Department circular to be issued later.

4. Holders of First Liberty Loan bonds now called for redemption on June 15, 1935, may, in advance of that date, be offered the privilege of exchanging all or any part of their called bonds for other interest-bearing obligations of the United States, in which event public notice will hereafter be given.

HENRY MORGENTHAU, Jr.,
Secretary of the Treasury.

TREASURY DEPARTMENT,
Washington, March 14, 1935.

Exhibit "E" to Stipulation

REDEMPTION OF FIRST LIBERTY LOAN BONDS

TREASURY DEPARTMENT,
OFFICE OF THE SECRETARY,
Washington, April 22, 1935.

1935
Department Circular No. 535
Public Debt Service.

To Holders of First Liberty Loan Bonds of 1932–47, and Others Concerned:

I. NOTICE OF CALL FOR REDEMPTION BEFORE MATURITY

On March 14, 1935, the following public notice of call for redemption was given:

To Holders of First Liberty Loan Bonds of 1932–47, and Others Concerned:

Public Notice is hereby given:

1. All outstanding First Liberty Loan bonds of 1932–47 are hereby called for redemption on June 15, 1935. The various issues of First Liberty Loan bonds (all of which are included in this call) are as follows:

First Liberty Loan 3½ percent bonds of 1932–47 (First 3½'s), dated June 15, 1917;

First Liberty Loan Converted 4 percent bonds of 1932–47 (First 4's), dated November 15, 1917;

22 First Liberty Loan Converted 4¼ per cent bonds of 1932–47 (First 4¼'s), dated May 9, 1918; and

First Liberty Loan Second Converted 4¼ percent bonds of 1932–47 (First-Second 4¼'s), dated October 24, 1918.

2. Interest on all such outstanding First Liberty Loan bonds will cease on said redemption date, June 15, 1935.

3. Full information regarding the presentation and surrender of First Liberty Loan bonds for redemption under this call will be given in a Treasury Department circular to be issued later.

4. Holders of First Liberty Loan bonds now called for redemption on June 15, 1935, may in advance of that date, be offered the privilege of exchanging all or any part of their called bonds for other interest-bearing obligations of the United States, in which event public notice will hereafter be given.

HENRY MORGENTHAU, Jr.,
Secretary of the Treasury.

TREASURY DEPARTMENT,
Washington, March 14, 1935.

II. OPTIONAL EXCHANGE OFFERING

1. Holders of First Liberty Loan bonds, called for redemption on June 15, 1935, are offered the privilege, for a limited period beginning April 22, 1935, of exchanging all or any part of their called bonds, either (1) for 2⅞ percent Treasury Bonds of 1955–60, or (2) for 5-year 1⅝ percent Treasury Notes of Series A–1940, both bonds and notes being dated and bearing interest from March 15, 1935.

2. Full information concerning the optional exchange offering of Treasury bonds is set forth in Treasury Department Circular No. 536, and full information concerning the optional exchange offering of Treasury notes is set forth in Treasury Department Circular No. 537, both circulars being dated April 22, 1935. As the privilege of exchanging First Liberty Loan bonds will be accorded for a limited period only and may be terminated at any time without notice,
23 holders of First Liberty Loan bonds who desire to take advantage of either offering should act promptly, following the instructions given in the Treasury Department circulars referred to above, copies of which may be obtained from any Federal Reserve bank or branch, or from the Treasury Department, Washington, D. C.

III. RULES AND REGULATIONS GOVERNING REDEMPTION OF FIRST LIBERTY LOAN BONDS

Pursuant to the call for redemption, as set forth in Section I of this circular, the following rules and regulations are hereby prescribed to govern the presentation and surrender of First Liberty Loan bonds for redemption on June 15, 1935:

1. Payment of called bonds on June 15, 1935.—Holders of any outstanding First Liberty Loan bonds will be entitled to have such bonds redeemed and paid at par on June 15, 1935, with interest in full to.

that date. After June 15, 1935, interest will not accrue on any First Liberty Loan bonds.

2. Presentation and surrender of coupon bonds.—First Liberty Loan bonds in coupon form should be presented and surrendered to any Federal Reserve bank or branch, or to the Treasurer of the United States, Washington, D. C., for redemption on June 15, 1935. The bonds must be delivered at the expense and risk of holders (see par. 8 of this section) and should be accompanied by appropriate written advice (see Form P. D. 1435 attached hereto). Checks in payment of principal will be mailed to the address given in the form of advice accompanying the bonds surrendered.

3. Coupons dated June 15, 1935, which become payable on that date, should be detached from any First Liberty Loan bonds before such bonds are presented for redemption on June 15, 1935, and such coupons should be collected in regular course when due. All coupons pertaining to such bonds bearing dates subsequent to June 15, 1935, must be attached to any such bonds when presented for redemption, provided, however, if any such coupons are missing from bonds so presented for redemption the bonds nevertheless will be redeemed, but the full face amount of any such missing coupons will be deducted from the payment to be made on account of such
24 redemption, and any amounts so deducted will be held in the Treasury to provide for adjustments or refunds on account of such missing coupons as may subsequently be presented.[1]

4. Presentation and surrender of registered bonds.—First Liberty Loan bonds in registered form must be assigned by the registered payees or assigns thereof, or by their duly constituted representatives, in accordance with general regulations of the Treasury Department governing assignments, in the form indicated in the next paragraph hereof, and thereafter should be presented and surrendered to any Federal Reserve bank or branch, or to the Division of Loans and Currency, Treasury Department, Washington, D. C., for redemption on June 15, 1935. The bonds must be delivered at the expense and risk of holders (see par. 8 of this section) and should be accompanied by appropriate written advice (see Form P. D. 1436 attached hereto). In all cases checks in payment of principal and final interest due will be mailed to the address given in the form of advice accompanying the bonds surrendered.

5. If the registered payee, or an assignee holding under proper assignment from the registered payee, desires that payment of the principal and final installment of interest be made to him, the bonds should be assigned by such payee or assignee, or by a duly constituted representative, to "The Secretary of the Treasury for redemption." If it is desired for any reason that payment be made to some

[1] First 4's, First 4¼'s, and First-Second 4¼'s were originally issued in temporary form. The final coupon attached to such temporary bonds became due on December 15, 1919, June 15, 1920, and December 15, 1920, respectively. The holders of any such temporary bonds will receive all past due interest to June 15, 1935, when such bonds are redeemed pursuant to the call. Any coupons now attached to such temporary bonds should be detached and collected in regular course.

other person, without intermediate assignment, the bonds should be assigned to "The Secretary of the Treasury for redemption for the account of _____", inserting the name and address of the person to whom payment is to be made. A representative or fiduciary should not assign for payment to himself individually unless expressly authorized to do so by the instrument under which he is acting; he may, however, assign for payment to himself in his representative or fiduciary capacity.

6. Assignment in blank or other assignment having similar effect will be recognized, but in that event payment will be made to the person surrendering the bond for redemption, since under such assignment the bond becomes in effect payable to bearer. Assignments in blank or assignments having similar effect should be avoided, if possible, in order not to lose the protection afforded by registration.

7. Final interest due on June 15, 1935, on registered bonds of the First Liberty Loan will be paid with the principal in accordance with the assignments on the bonds surrendered. Transfers and exchanges involving registered bonds will be permitted up to the close of business on May 31, 1935, but not after that date.

8. Transportation of bonds.—Bonds presented for redemption under this circular must be delivered to a Federal Reserve bank or branch, or to the Treasury Department, Washington, D. C., at the expense and risk of the holder. Coupon bonds should be forwarded by registered mail insured or by express prepaid. Registered bonds bearing restricted assignments may be forwarded by registered mail, but registered bonds bearing unrestricted assignments should be forwarded by registered mail insured or by express. Facilities for transportation of bonds by registered mail insured may be arranged between incorporated banks and trust companies and the Federal Reserve banks, and holders may take advantage of such arrangements when available, utilizing such incorporated banks and trust companies as their agents. Incorporated banks and trust companies are not agents of the United States under this circular.

IV. TIME OF PRESENTATION OF CALLED BONDS FOR REDEMPTION

1. In order to facilitate the redemption of First Liberty Loan bonds on June 15, 1935, any such bonds should be presented and surrendered in the manner herein prescribed well in advance of that date, but not before May 15, 1935. Such early presentation by holders will assure prompt payment of principal when due. This is particularly important with respect to registered bonds, for payment cannot be made until registration shall have been discharged at the Treasury Department.

2. It will expedite redemption if the bonds are presented to Federal Reserve banks or branches and not direct to the Treasury Department.

3. As hereinbefore provided: (1) coupons due June 15, 1935, should be detached from any permanent coupon bonds when such

bonds are presented for redemption on that date, such coupons to be collected when due; and (2) final interest due on any registered bonds will be paid with the principal amount.

4. If First Liberty Loan bonds called for redemption on June 15, 1935, are to be presented for exchange for 2⅞ percent Treasury bonds of 1955–60, instructions given in Treasury Department Circular No. 536 should be followed; if to be presented for 1⅝ percent Treasury notes of series A–1940, instructions given in Treasury Department Circular No. 537 should be followed; if to be presented for redemption on June 15, instructions given in this circular should be followed.

V. GENERAL PROVISIONS

1. Any further information which may be desired regarding the redemption of First Liberty Loan bonds under this circular may be obtained from any Federal Reserve bank or branch or from the Treasury Department, Washington, D. C., where copies of the Treasury Department's regulations governing assignments also may be obtained.

2. As fiscal agents of the United States, Federal Reserve banks are authorized and requested to perform any necessary acts under this circular. The Secretary of the Treasury may at any time, or from time to time, prescribe supplemental or amendatory rules and regulations governing the matters covered by this circular, which will be communicated promptly to Federal Reserve banks.

HENRY MORGENTHAU, Jr.,
Secretary of the Treasury.

27 Memo: Pages 4 and 5 of this Exhibit omitted pursuant to Stipulation of Counsel.

The Plaintiff was thereupon called as a witness in his own behalf, and having been first duly sworn, was examined and testified as follows:

That he is a citizen of the United States and a resident of Baltimore County, State of Maryland. He is the holder and owner of a coupon dated December 15, 1935, formerly attached to a First Liberty Loan 3½% bond of the United States, as alleged in the petition. The said coupon was thereupon produced and received in evidence. By agreement of counsel for both parties, the coupon was immediately withdrawn and the copy of the coupon attached to the stipulation of facts as Exhibit B substituted in the place thereof.

The Plaintiff further testified that the aforementioned coupon was formerly attached to Bond No. 47084. The Bond No. 47084 was thereupon produced and received in evidence. By agreement of counsel for both parties, the bond was immediately withdrawn and the copy of the bond attached to the stipulation of facts as Exhibit A substituted in the place thereof.

The Plaintiff further testified that he purchased the bond in question on March 22, 1933, and paid 101-4/32nds. therefor. He bought the bond from the National City Company, and gave them his check

in dollars for the amount. He is still the holder of both the bond and the coupon.

The Plaintiff thereupon offered the following supplemental stipulation:

Supplemental stipulation

[Title omitted.]

It is hereby stipulated by and between the parties hereto that the Court shall find the facts set forth in the Stipulation of Facts filed herein and in addition find that the Plaintiff was at the time of the institution of this suit, and now is, a citizen of the United
28 States and a resident of the State of Maryland; that on March 22, 1933, the Plaintiff purchased the $1,000 First Liberty Loan 3½% bond of the United States, No. 47084, offered in evidence, paying therefor the sum of $1,011.25; that the Plaintiff since said time has continuously held and owned, and now holds and owns, the said bond and the coupons attached thereto, including the coupon dated December 15, 1935; and that Exhibits A and B attached to the Stipulation of Facts filed herein are respectively true copies of said bond and said coupon dated December 15, 1935.

Each party reserves the right to request the Court for other and further findings of facts.

H. VERNON ENEY,
ALEXANDER GORDON III,
Attorneys for Plaintiff.
BERNARD J. FLYNN,
United States Attorney.

Thereupon the Plaintiff rested, and the Defendant, not offering any evidence, likewise rested.

The case having been closed by both Plaintiff and Defendant, the Plaintiff thereupon submitted the following prayers:

Plaintiff's request for additional finding of fact

The Plaintiff requests the Court to find as an additional fact in this case that at the time of the issuance of the "Notice of Call for Redemption" by the Secretary of the Treasury, a copy of which is attached to the Stipulation of Facts filed herein and marked "Exhibit D", it was not the purpose of the United States to pay the bonds referred to in such notice on June 15, 1935, or thereafter, in gold. Refused (WCC).

Plaintiff's second request for ruling of law

The Plaintiff requests the Court to rule as a matter of law that under the finding of facts in this case, the Plaintiff is entitled to
29 recover from the Defendant in this suit the sum of $17.50 in legal tender currency of the United States and that, accordingly, judgment should be entered in this case in favor of the Plaintiff against the Defendant for the sum of $17.50. Refused (WCC).

Plaintiff's third request for ruling of law

The Plaintiff requests the Court to rule as a matter of law that the provisions of the First Liberty Loan 3½% bond owned by the Plaintiff and offered in evidence in this case gives to the Defendant as the obligor of said bond the privilege or option of redeeming said bond upon the giving of the notice specified therein and upon the payment of the face amount of said bond in United States gold coin of the standard of value existing on June 15th, 1917, and that upon refusal or unwillingness on the part of the United States to pay on June 15th, 1935, the face amount of said bond in gold coin of the United States of the standard of value existing as of June 15th, 1917, the said bond was not then redeemable by the United States and interest coupon thereto attached dated December 15th, 1935, became due and payable by the United States on December 15th, 1935, and that since the United States has not paid the said coupon due December 15th, 1935, the Plaintiff is entitled to recover the face amount thereof in legal tender currency of the United States. Refused (WCC).

Plaintiff's fourth request for ruling of law

The Plaintiff requests the Court to rule as a matter of law that under the finding of facts in this case, since the Defendant was not in readiness to redeem the bond owned by the Plaintiff offered in evidence on June 15th, 1935, by payment of the face amount thereof in gold coin of the United States of the standard of value existing on June 15th, 1917, the said bond owned by the Plaintiff was not redeemable by the United States on June 15th, 1935, and that, accordingly, the interest coupon attached to said bond dated December 15th, 1935, is now due and payable. Refused (WCC).

Plaintiff's fifth request for ruling of law

The Plaintiff requests the Court to rule as a matter of law that under the finding of facts in this case the Defendant was not entitled to redeem the bond owned by the Plaintiff and offered in evidence on June 15th, 1935, unless on and after June 15th, 1935, the Defendant was ready and willing to pay to the Plaintiff upon surrender of said bond the sum of $1,000.00 in gold coin of the United States containing 25.8 grains of gold, .9 fine to the dollar. Refused (WCC).

Plaintiff's sixth request for ruling of law

The Plaintiff requests the Court to rule as matter of law that under the terms of the First Liberty Loan 3½% bond mentioned in the evidence, and the coupons thereto attached, the Defendant is bound to pay the coupons as they severally mature until the 15th day of June 1947 unless the said bond should, prior to that time, be duly

called for redemption in accordance with its terms; that the condition calling the bond must, prior to maturity, be strictly complied with and that the call in the terms set forth in the Treasury's circular mentioned in the Stipulation is not sufficient, unless the same was made with the bona fide intention of paying the same at the date fixed for redemption in gold coin of the United States of the standard of value existing on June 15th, 1917, and that the Defendant having, in violation of its contract, withdrawn gold from circulation and prevented itself from complying with the condition, the Plaintiff is entitled to recover upon the coupon maturing December 15th, 1935, the cause of action in this case, the face amount thereof, to wit, the sum of $17.50. Refused (WCC).

Plaintiff's seventh request for ruling of law

The Plaintiff requests the Court to rule as a matter of law that the Defendant having, prior to the date of the attempted call mentioned in the Stipulation, repudiated its obligation to pay the bond mentioned in the evidence and the several coupons thereon, including the coupon sued upon in this case, in gold coin of the United States
31 of the standard of value existing on June 15th, 1917, the Defendant at the time of said attempted call had broken its contract and was in default and, therefore, could not take advantage of the provision of the bond authorizing its redemption prior to maturity; and, therefore, judgment should be entered for the Plaintiff in the face amount of the coupon sued upon. Refused (WCC).

Whereupon the Plaintiff in due course excepted to the rulings of the Court in rejecting and refusing to grant the Plaintiff's request for additional finding of fact and the Plaintiff's six requests for rulings of law.

The Court then, after argument by counsel for the Plaintiff and the Defendant, announced its ruling as follows:

Ruling of court

"On the authority of Perry v. United States, 294 U. S. 330, and Morgan v. The United States, 113 U. S. 476, I find that the Plaintiff has no right to recover in the present suit, and that such right, if any, to recover, must be in accordance with the rule laid down in the Perry case."

Thereupon the Plaintiff duly excepted to said ruling.

Order settling bill of exceptions

And now in furtherance of justice and that right may be done, the Plaintiff, Arthur W. Machen, tenders and presents the aforegoing as the bill of exceptions in this appeal from the action of the Court, and prays that the same may be settled and allowed and signed and

sealed by the Court and made a part of the Record, and the same is accordingly done this 31st day of July, 1936.

WILLIAM C. COLEMAN,
United States District Judge.

The aforegoing bill of exceptions is hereby approved.

H. VERNON ENEY,
ALEXANDER GORDON III,
Attorneys for Plaintiff.
BERNARD J. FLYNN,
United States Attorney.
C. ROSS MCKENRICK,
Asst. U. S. Attorney.

32 In United States District Court

Assignment of errors

Filed July 6, 1936

Comes now the appellant, and in connection with his petition for appeal in this proceeding, says, that in the record, in the proceedings, and in the final judgment therein manifest error has intervened, to the prejudice of the appellant, to wit:

1. The Court erred in rejecting and refusing to grant the "Plaintiff's Request for Additional Finding of Fact", which reads as follows:

"The Plaintiff requests the Court to find as an additional fact in this case that at the time of the issuance of the 'Notice of Call for Redemption' by the Secretary of the Treasury, a copy of which is attached to the Stipulation of Facts filed herein and marked 'Exhibit D', it was not the purpose of the United States to pay the bonds referred to in such notice on June 15, 1935, or thereafter, in gold."

2. The Court erred in rejecting and refusing to grant the "Plaintiff's Second Request for Ruling of Law", which reads as follows:

"The Plaintiff requests the Court to rule as a matter of law that under the finding of facts in this case, the Plaintiff is entitled to recover from the Defendant in this suit the sum of $17.50 in legal tender currency of the United States and that, accordingly, judgment should be entered in this case in favor of the Plaintiff against the Defendant for the sum of $17.50."

3. The Court erred in rejecting and refusing to grant the "Plaintiff's Third Request for Ruling of Law", which reads as follows:

"The Plaintiff requests the Court to rule as a matter of law that the provisions of the First Liberty Loan 3½% bond owned by the Plaintiff and offered in evidence in this case gives to the Defendant as the obligor of said bond, the privilege or option of redeeming said bond upon the giving of the notice specified therein and

33 upon the payment of the face amount of said bond in United States gold coin of the standard of value existing on June 15th,

1917, and that upon refusal or unwillingness on the part of the United States to pay on June 15th, 1935, the face amount of said bond in gold coin of the United States of the standard of value existing as of June 15th, 1917, the said bond was not then redeemable by the United States and interest coupon thereto attached dated December 15th, 1935, became due and payable by the United States on December 15th, 1935, and that since the United States has not paid the said coupon due December 15th, 1935, the Plaintiff is entitled to recover the face amount thereof in legal tender currency of the United States."

4. The Court erred in rejecting and refusing to grant the "Plaintiff's Fourth Request for Ruling of Law", which reads as follows:

"The Plaintiff requests the Court to rule as a matter of law that under the finding of facts in this case, since the Defendant was not in readiness to redeem the bond owned by the Plaintiff offered in evidence, on June 15th, 1935, by payment of the face amount thereof in gold coin of the United States of the standard of value existing on June 15th, 1917, the said bond owned by the Plaintiff was not redeemable by the United States on June 15th, 1935, and that, accordingly, the interest coupon attached to said bond dated December 15th, 1935, is now due and payable."

5. The Court erred in rejecting and refusing to grant the "Plaintiff's Fifth Request for Ruling of Law", which reads as follows:

"The Plaintiff requests the Court to rule as a matter of law that under the finding of facts in this case the Defendant was not entitled to redeem the bond owned by the Plaintiff and offered in evidence, on June 15th, 1935, unless *on* and after June 15th, 1935, the Defendant was ready and willing to pay *to* the Plaintiff upon surrender of said bond the sum of $1,000.00 in gold coin of the United States containing 25.8 grains of gold .9 fine to the dollar."

6. The Court erred in rejecting and refusing to grant the "Plaintiff's Sixth Request for Ruling of Law", which reads as follows:

34 "The Plaintiff requests the Court to rule as a matter of law that under the terms of the First Liberty Loan 3½% bond mentioned in the evidence, and the coupons thereto attached, the Defendant is bound to pay the coupons as they severally mature until the 15th day of June 1947, unless the said bond should, prior to that time, be duly called for redemption in accordance with its terms; that the condition calling the bond must, *prior to* maturity, be strictly complied with and that the call in the terms set forth in the Treasury's circular mentioned in the Stipulation is not sufficient, unless the same was made with the *bona fide* intention of paying the same at the date fixed for redemption in gold coin of the United States of the standard of value existing on June 15th, 1917, and that the Defendant having, in violation of its contract, withdrawn gold from circulation and prevented itself from complying with the condition, the Plaintiff is entitled to recover upon the coupon maturing Decem-

ber 15th, 1935, the cause of action in this case, the face amount thereof, to-wit, the sum of $17.50."

7. The Court erred in rejecting and refusing to grant the "Plaintiff's Seventh Request for Ruling of Law", which reads as follows:

"The Plaintiff requests the Court to rule as a matter of law that the Defendant having, prior to the date of the attempted call mentioned in the Stipulation, repudiated its obligation to pay the bond mentioned in the evidence, and the several coupons thereon, including the coupon sued upon in this case, in gold coin of the United States of the standard of value existing on June 15th, 1917, the Defendant at the time of said attempted call had broken its contract and was in default and, therefore, could not take advantage of the provision of the bond authorizing its redemption prior to maturity; and, therefore, judgment should be entered for the Plaintiff in the face amount of the coupon sued upon."

8. The Court erred in ruling in its opinion as follows:

"On the authority of Perry v. United States, 294 U. S. 330, and Morgan v. The United States, 113 U. S. 476, I find that the Plaintiff has no right to recover in the present suit, and that such right, if any, to recover must be in accordance with the rule laid down in the Perry case."

35 For which errors the appellant, Arthur W. Machen, respectfully prays that the said judgment of the District Court of the United States for the District of Maryland, entered on the 23rd day of June 1936 in the above entitled cause, be reversed and a judgment rendered in favor of the appellant.

H. VERNON ENEY,
ALEXANDER GORDON III,
Attorneys for Appellant.

In United States District Court

Stipulation of counsel as to making up record on appeal

Filed July 21, 1936.

It is hereby stipulated by counsel for both parties hereto:

First: That Rule 14 of the United States Circuit Court of Appeals for the Fourth Circuit shall apply and govern in the making up and printing of the Record in the above entitled case.

Second: That the following portions of the Record in the above entitled case shall be incorporated in the Transcript of the Record on appeal:

1. Docket entries.
2. Petition of Plaintiff.
3. Memorandum of Clerk as to filing of affidavit of service.
4. Answer of Defendant.
5. Findings of fact, conclusions of law, and verdict.
6. Judgment.

7. Bill of exceptions, including stipulations of facts and exhibits filed therewith. (As to the part of the bill of exceptions to be included in the printed Record, see paragraph Fourth of this stipulation.)

8. Assignment of errors of the Plaintiff.

36 9. This stipulation.

10. Memorandum of the Clerk.

11. Order transmitting Record.

12. Clerk's certificate.

Third: That the affidavit of service of a copy of the petition shall not be included in the printed Record on appeal, but in lieu thereof the Clerk shall insert in the Record a memorandum of the filing of said affidavit of service.

Fourth: That the exhibits attached to the stipulation of facts referred to in Item 7 of Paragraph Second of this stipulation shall be included in the printed Record, except that Exhibit C and all of Exhibit E except the first three pages thereof, shall not be included in the printed Record, but neither party shall be precluded from reference to or use of such omitted parts.

H. VERNON ENEY,
ALEXANDER GORDON III,
Attorneys for Plaintiff.
BERNARD J. FLYNN,
United States Attorney.
C. ROSS MCKENRICK,
Asst. U. S. Attorney.

In United States District Court

Memorandum of the clerk

1. Petition for appeal filed 6th July 1936.
2. Appeal granted 6th July 1936.
3. Appeal Bond, 6th July 1936. Penalty, $300.00. Obligors: Arthur W. Machen, as Principal, and Alexander Armstrong and H. Vernon Eney, as Surety. Conditioned for costs.
4. Citation dated 9th June 1936. (Service acknowledged.)

37 In United States District Court

Order to transmit record

And, thereupon, it is Ordered by the Court here that a transcript of the Record and proceedings of the cause aforesaid, together with all things thereunto relating, be transmitted to the said United States Circuit Court of Appeals for the Fourth Circuit, and the same is transmitted accordingly.

Teste:

ARTHUR L. SPAMER, *Clerk.*

[Clerk's certificate to foregoing transcript omitted in printing.]

39 In United States Circuit Court of Appeals for the Fourth Circuit

No. 4108

ARTHUR W. MACHEN, APPELLANT

versus

UNITED STATES OF AMERICA, APPELLEE

Appeal from the District Court of the United States for the District of Maryland, at Baltimore

Docket entries

September 3, 1936, the transcript of record is filed and the cause docketed.

Same day, the original petition for appeal, order allowing appeal, bond, and citation are certified up under section 7 of Rule 14.

Same day, petition and order extending the time for a period of thirty days after August 15, 1936, for preparing, printing, and filing the record and docketing the cause are filed.

Same day, the appearance of Alexander Gordon, III, is entered for the appellant.

Same day, twenty-four copies of the printed record are filed.

40 September 5, 1936, the appearance of Bernard J. Flynn, United States Attorney; C. Ross McKenrick, Assistant U. S. Attorney; Harry LeRoy Jones and Edward First, Attorneys, Department of Justice, is entered for the appellee.

September 10, 1936, the appearance of H. Vernon Eney is entered for the appellant.

October 28, 1936, motion of appellee to re-set cause for argument is filed and the cause is assigned for argument on November 16, 1936.

ARGUMENT OF CAUSE

November 16, 1936 (November term, 1936), cause came on to be heard before Parker and Soper, Circuit Judges, and Watkins, District Judge, and is argued by counsel and submitted.

41 In United States Circuit Court of Appeals for the Fourth Circuit

No. 4108

ARTHUR W. MACHEN, APPELLANT

versus

THE UNITED STATES OF AMERICA, APPELLEE

Appeal from the District Court of the United States for the District Maryland, at Baltimore

Argued November 16, 1936. Decided January 15, 1937

Before PARKER and SOPER, Circuit Judges, and WATKINS, District Judge

H. Vernon Eney (Alexander Gordon, III, on brief) for Appellant, and Harry LeRoy Jones, Attorney, Department of Justice,

(James W. Morris, Assistant Attorney General; Bernard J. Flynn, U. S. Attorney; C. Ross McKenrick, Assistant U. S. Attorney; Edward First, Attorney, Department of Justice; Clarence V. Opper, Assistant General Counsel, Treasury Department, and Bernard Bernstein, Attorney, Treasury Department, on brief), for Appellee.

Opinion

Filed January 15, 1937

42 PARKER, Circuit Judge: This is a suit by the holder of a $1,000.00 3½% First Liberty Loan Bond to recover of the United States the amount of the interest coupon for $17.50 due December 15, 1935. The government's defense is that the bond was called for payment on June 15, 1935, and that by express provision of the bond itself interest ceased after that date and the coupons thereafter maturing became void. Plaintiff contends in reply to this that the call for payment and notice issued thereon were invalid to stop the running of interest because, under the acts of Congress in effect at that time, the bond could not be paid in gold according to the promise therein contained and because the currency in which payment was tendered was based upon the "devalued" dollar instead of upon the standard of value in effect at the time the bonds were issued. The facts were stipulated, and from judgment thereon for the government the plaintiff has appealed. The pertinent provisions of the bond are as follows:

"The United States of America for value received promises to pay to the bearer the sum of one thousand dollars on the 15th day of June 1947 with interest at the rate of three and one-half per centum per annum, payable semi-annually on December 15 and June 15 in each year until the principal hereof shall be payable, upon presentation and surrender of the interest coupons hereto attached as they severally mature. *The principal and interest of this bond shall be payable in United States Gold coin of the present standard of value*, and shall be exempt, both as to principal and interest, from all taxation, except estate or inheritance taxes, imposed by authority of the United States, or its possession, or by any State or local taxing authorities. * * * All or any of the bonds of the series of which this is one may be redeemed and paid at the pleasure of the United States on or after June 15, 1932, on any semi-annual interest payment date or dates, *at the face value thereof and interest accrued at the date of redemption, on notice published at least three months prior to the redemption date* and published
43 thereafter from time to time during said three months' period, as the Secretary of the Treasury shall direct. If in any case less than all of the bonds of said series are to be redeemed, the bonds to be redeemed will be determined by lot by such method as may be prescribed by the Secretary of the Treasury. From the date of *redemption* designated in any *such notice*, interest on the bonds called

for redemption shall cease, and all coupons thereon maturing after said date shall be void." [Italics ours.]

The notice calling the bond for payment was in the usual form; and there is no question but that it would have had the effect of stopping the running of interest and avoiding the coupons maturing after June 15, 1935, except for the legislation of Congress affecting the currency, which limited the power of the Secretary of the Treasury and must be read into the notice. At the time of the issuance of the bond the gold dollar was the standard of value in our monetary system and was defined by law as consisting of twenty-five and eight-tenths grains of gold nine-tenths fine. Act of Mar. 14, 1900, c. 41, sec. 1, 31 Stat. 45, 31 U. S. C. A. 314. And the statutes provided for the use of gold coin as a medium of exchange. R. S. 3511. By Presidential Proclamation of January 31, 1934, issued under the act of May 12, 1933 (38 Stat. 52, 53), as amended by the act of January 30, 1934 (48 Stat. 342), the *content of the dollar* was reduced to 15-5/21 grains of gold nine-tenths fine; and, at the time of the publication of the notice calling the bond for payment, gold coin had been withdrawn from circulation, its possession had been prohibited under penalty, and payment in gold coin by the United States had been prohibited. 48 Stat. 337, 340. By joint resolution of June 5, 1933 (48 Stat. 112, 113), the payment of gold clause bonds in any legal tender currency "dollar for dollar" had been authorized; and it was paper currency based on the 15-5/21 grain dollar, and nothing
44 else, that was offered in payment of gold clause bonds which were called for payment by the Treasury. The notice of redemption calling the bond in question for payment was equivalent, therefore, to a notice that the United States elected to redeem the bond in paper currency based on a 15-5/21 grain dollar, notwithstanding that it was payable in gold coin based on a 25-8/10 grain dollar and might be redeemed only at its face value.

In Perry v. United States, 294 U. S. 330, the Supreme Court held the joint resolution of June 5, 1933, invalid in so far as it affected gold clause bonds of the government because it was in conflict with Art. 1, Sec. 8, Clause 2, of the Constitution, authorizing Congress to borrow money on the credit of the United States, and with Sec. 4 of the 14th Amendment to the Constitution, providing that the validity of the public debt of the United States shall not be questioned. The court quoted with approval from the Sinking Fund Cases: "The United States are as much bound by their contracts as are individuals. If they repudiate their obligations, it is as much repudiation, with all the wrong and reproach that term implies, as it would be if the repudiator had been a State or a municipality or a citizen." And to this the court added:

"The Congress as the instrumentality of sovereignty is endowed with certain powers to be exerted on behalf of the people in the manner and with the effect the Constitution ordains. The Congress cannot invoke the sovereign power of the people to override their will as thus declared. The powers conferred upon the Congress are

harmonious. The Constitution gives to the Congress the power to borrow money on the credit of the United States, an unqualified power, a power vital to the Government—upon which in an extremity its very life may depend. The binding quality of the promise of the United States is of the essence of the credit which is so pledged. Having this power to authorize the issue of definite obligations for the payment of money borrowed, the Congress has not been vested with authority to alter or destroy those obligations. The fact that the United States may not be sued without its consent is a matter of procedure which does not affect the legal and binding
45 character of its contracts. While the Congress is under no duty to provide remedies through the courts, the contractual obligation still exists, and, despite infirmities of procedure, remains binding upon the conscience of the sovereign."

In the Perry case it was held that the holder of a gold clause U. S. Government bond who had demanded payment in gold upon the calling of his bond was not entitled to recover damages for breach of the government's contract to pay in gold, because as gold had been withdrawn from circulation as a monetary medium of exchange there was no standard by which such damage might be measured. In the pending case, however, the plaintiff is not seeking payment of the interest in gold nor suing for damages by reason of the failure of the government to pay the interest in gold. On the contrary, the plaintiff is willing to accept the interest in legal tender currency, dollar for dollar, and the suit is based on the theory that the government can hasten the maturity of the bonds and thereby stop the running of interest and avoid the subsequently maturing coupons, only by complying with the terms of the contract contained in the bonds themselves, which authorize redemption at face value upon the giving of three months' notice. It is argued by the government that as the court in the Perry case did not deny the right of the holder of the bonds to sue the United States, the implication is that the call was valid, for otherwise the bondholder would have had no right to sue for the principal of the debt; but the question of the validity of the call was not raised in that case and was not considered by the court.

The decision in Morgan v. United States 113 U. S. 476, relied upon, with the Perry case, by the learned judge below, is not an authority against the position of plaintiff. That case merely holds that when notice of redemption of government bonds is given in accordance with their terms, they become payable on demand without
46 interest after the maturity of the call. The question here is whether there was such an exercise of the right of redemption by the call as to stop the running of interest and avoid the interest coupons.

The argument of the government and the decision of the Court of Claims in Dixie Terminal Co. v. United States —, Ct. Cl. —, to which our attention is called, proceed upon the theory that the provision of the bond providing for notice, upon which interest is to

cease and coupons subsequently maturing are to become void, is to be construed as though it were independent of the provision for redemption which it follows, i. e., that a notice is sufficient which states that the bonds will be redeemed on the named date, even though it does not say or mean to say that they will be redeemed in accordance with their terms. We think that the position is unsound and that, under the decision in the Morgan case, supra, the provision as to notice must be construed as a part of the provision for redemption. The bonds were not finally payable until June 15, 1947. The government was given an option to redeem on or after June 15, 1932, but this option was to redeem them "at the face value thereof and interest accrued at the date of redemption, on notice published at least three months prior to the redemption date." Interest was to cease and subsequently maturing coupons were to be void "from the date of redemption designated in any such notice", i. e., from the date of redemption designated in a notice calling the bonds for redemption "at the face value thereof and interest accrued prior to the redemption date." It is manifest that when the bonds were payable in gold coin of the standard of value at the time of issue, i. e., 25–$^{8}/_{10}$ grains of gold to the dollar, a proposal to redeem them in paper money based upon 15–$^{5}/_{21}$ grains of gold to the dollar was not a proposal to redeem them at face value; and a notice that the government would redeem them on such basis, which is what the notice in question means when considered as it must be in connection with the legislation binding upon the Secretary of the Treasury, was not such a notice as the bonds prescribed for the exercise of the option retained by the government. It would hardly be contended that a notice to the effect that the government would redeem the bonds at 59 cents on the dollar would be a sufficient notice under the bond to stop the running of interest and avoid the subsequently maturing coupons; but it will be seen that this is precisely what the notice as published means when the acts of Congress and the presidential proclamation affecting the currency are read into it, and when it is remembered that Congress is without power to abrogate the gold clause as contained in obligations of the government.

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It is suggested that the legislation and proclamation affecting the currency, to which we have referred, should be held invalid so far as government obligations are concerned, and that when this is done the notice should be construed as offering to pay the face value of the bonds. The answer to this is that whatever the validity of the legislation and the proclamation in question, so far as impairing the obligations of the government is concerned, they are unquestionably valid as limitations upon the power of the Secretary of the Treasury. He is forbidden by them to pay gold out of the treasury, and he is allowed to pay obligations in currency only "dollar for dollar", notwithstanding such obligations may contain a gold clause. It seems clear that, even though Congress may not under the Constitution question the obligations of the government, it may control the dis-

position of the gold in the treasury and may direct how the resources of the government may be used in the discharge of its obligations. Cf. Perry v. U. S., 294 U. S. 330, at 356. It follows that, because of the legislation and the presidential proclamation to which we have referred, the Secretary of the Treasury was without power, both at the time of the publication of the notice and at the time fixed
48 for redemption, either to pay gold on the gold clause bonds or to pay in paper money the value of the gold which they promised. He was consequently without power under the law to redeem these gold clause bonds at their face value; and the notice of redemption which he issued must be construed in the light of this lack of power.

It is suggested that the notice must be read without reference to the legislation and the presidential proclamation affecting the currency, on the ground that the notice was given by the government in its private capacity as a borrower, whereas the legislation and proclamation issued pursuant thereto were the exercise of governmental powers. We see no basis for such a position. It is elementary that laws which subsist at the time and place of the making of a contract enter into and form a part of it as fully as if they had been incorporated in its terms. F. & M. Bank v. Federal Reserve Bank, 262 U. S. 649; Worthem Co. v. Kavanaugh, 295 U. S. 56, 60. A fortiori, laws affecting and limiting the means of payment must be read into a governmental notice promising payment. When the Secretary of the Treasury has been forbidden by law to pay gold out of the treasury and has been required to discharge bonds tendered for redemption with currency based on a 15-$^{5}/_{21}$ grain dollar, it is idle to contend that a notice to redeem means that he stands ready to redeem in accordance with the promise of the bond, i. e., in gold coin based upon a 25-$^{8}/_{10}$ grain dollar.

It is argued that if gold coin had been paid plaintiff in accordance with the terms of the bond he would have been required to surrender same to the government at once and accept legal tender currency in lieu thereof, and that, therefore, the tender of currency based on the devalued dollar was substantial compliance with the condition of redemption; but if the government could nullify its promise as contained in the gold clause in this way, the gold clause would mean nothing. In the Perry case the majority of the Court were
49 of opinion that the government, although immune from liability in the action, was bound by its obligation contained in the gold clause, notwithstanding the exercise by it of the constitutional power to regulate the currency. This is made very clear by considering the opinion of the concurring Justice in connection with the opinion of the Court. Since this is so, the contract as contained in the gold clause remained in effect notwithstanding the legislation to which we have referred and the proclamation issued thereunder; and the running of interest on the bond sued on could not be stopped or the interest coupons avoided except by compliance with the provi-

sion for redemption, which, as we have seen, has not been complied with. Since the plaintiff is willing to accept payment of interest in the present currency, the question does not arise as to whether he is entitled to have same paid in gold.

No amount of argument can obscure the real situation. It is this: the government has promised to pay the bonds in question in gold coin of the standard of value prevailing in 1917. By their terms, it is permitted to redeem them only by paying them at their face value. It is proposing to redeem them, not by paying them at that face value but in paper money worth only about 59% thereof. The notice which it has issued means this and nothing else. Such a notice is not in accordance with the condition of redemption specified in the bond and consequently does not stop the running of interest or avoid the coupons.

For the reasons stated, we think that there was error in entering judgment for the government upon the facts as stipulated.

Reversed.

51 In United States Circuit Court of Appeals, Fourth Circuit

No. 4108

ARTHUR W. MACHEN, APPELLANT

vs.

UNITED STATES OF AMERICA, APPELLEE

Appeal from the District Court of the United States for the District of Maryland

Judgment

Filed and Entered January 15, 1937

This cause came on to be heard on the transcript of the record from the District Court of the United States for the District of Maryland, and was argued by counsel.

On consideration whereof, It is now here ordered and adjudged by this Court that the judgment of the said District Court, in this cause be, and the same is hereby, reversed; and that this cause be, and the same is hereby, remanded to the District Court of the United States for the District of Maryland, at Baltimore, with directions to set aside the verdict and grant a new trial in accordance with
52 the opinion of the Court filed herein.

JOHN J. PARKER,
Senior Circuit Judge.

JANUARY 15, 1937.

53 [Petition for rehearing and brief in support thereof, covering 20 pages, omitted from this print. It was denied, and nothing more by order of April 6, 1937.]

73 In United States Circuit Court of Appeals

Order staying mandate pending petition for rehearing

Filed February 15, 1937

Upon the application of the Appellee, by its attorneys, and it appearing to the Court that the Appellee has presented a petition for a rehearing in this cause,

It is ordered that the mandate of this Court in the above entitled cause be, and the same is hereby, stayed pending the action of the Court upon the said petition of the Appellee for a rehearing.

JOHN J. PARKER,
Senior Circuit Judge.

FEBRUARY 15, 1937.

In United States Circuit Court of Appeals, Fourth Circuit

[Title omitted.]

Order denying rehearing

Filed and Entered April 6, 1937

74 This Court having at its January term, 1937, rendered its decision reversing the judgment of the said District Court, appealed from in this cause, and the appellee having on February 13, 1937, presented to the Court a petition for a rehearing of the said cause, and the same having been carefully considered,

It is now here ordered by this Court that the rehearing asked for be, and the same is hereby, denied. Let mandate issue after the expiration of five days from this date.

JOHN J. PARKER,
Senior Circuit Judge.

APRIL 6th, 1937.

April 9, 1937, petition of appellee for a stay of the mandate is filed.

In United States Circuit Court of Appeals

Order staying mandate pending application for writ of certiorari

Filed April 9, 1937

Upon the application of the appellee, by its attorneys, Sam E. Whitaker, Assistant Attorney General, and Harry LeRoy Jones, Attorney, Department of Justice, and for good cause shown,

75 It is ordered that the mandate of this Court in the above entitled cause be, and the same is hereby, stayed pending the application of the said appellee in the Supreme Court of the United States for a writ of certiorari to this Court, unless otherwise ordered

by this or the said Supreme Court, and provided said application is filed in the said Supreme Court within 30 days from this date.

JOHN J. PARKER,
Senior Circuit Judge.

APRIL 9th, 1937.

76 May 7, 1937, petition of appellee for a further stay of the mandate is filed.

In United States Circuit Court of Appeals

Order further staying mandate

Filed May 10, 1937

Upon the application of the appellee, by its attorneys, Sam E. Whitaker, Assistant Attorney General, and Harry LeRoy Jones, Attorney, Department of Justice, and for good cause shown,

It is ordered that the mandate of this Court in the above entitled cause be, and the same is hereby, further stayed pending the application of the said appellee in the Supreme Court of the United States for a writ of certiorari to this Court, unless otherwise ordered by this or the said Supreme Court, and provided said application is filed in the said Supreme Court within 30 days from this date.

JOHN J. PARKER,
Senior Circuit Judge.

MAY 10th, 1937.

77 [Clerk's certificate to foregoing transcript omitted in printing.]

78 Supreme Court of the United States

Order allowing certiorari

Filed October 11, 1937

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Fourth Circuit is granted, and the case is assigned for hearing immediately following No. 43.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice Black took no part in the consideration and decision of this application.

(Endorsement on cover:) File No. 41679. U. S. Circuit Court of Appeals, Fourth Circuit. Term No. 198. The United States of America, petitioner, *vs.* Arthur W. Machen. Petition for a writ of certiorari and exhibit thereto. Filed July 6, 1937. Term No. 198 O. T. 1937.

U.S. GOVERNMENT PRINTING OFFICE: 1937